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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION N |
|--|-------------|----------------------|---------------------|----------------|
| 10/090,121   | 02/28/2002  | David S. Goldsteen   | 293/002CONT2        | 3451           |
| 1473   | 7590        | 10/05/2004           | EXAMINER            |                |
| FISH & NEAVE<br>1251 AVENUE OF THE AMERICAS<br>50TH FLOOR<br>NEW YORK, NY 10020-1105 |             |                      | THALER, MICHAEL H   |                |
|  |             |                      | ART UNIT            | PAPER NUMBER   |
|  |             |                      | 3731                |                |

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/090,121

Applicant(s)

GOLDSTEEN ET AL.

Examiner

Michael Thaler

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 1-3, 7-16 and 23-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-6 and 17-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 3731

Claims 1-3, 7-16 and 23-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on June 14, 2004.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 4-6 and 17-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This application is described as being a continuation of application Serial No. 09/955,244. There is no basis in the original disclosure of the parent application for the feature defined in claim 4 of twisting joints coupling a cylinder-like body to at least one set of spikes. Further, there is no basis for the feature defined in claim 5 that the twisting joints comprise at least on

Art Unit: 3731

torsion bar. There is no basis for the feature defined in claim 6 that the twisting joints comprise at least one bend area. There is no basis for the feature defined in claim 17 of a collapsing portion for axial collapsing a spikes section. There is no basis for the feature defined in claim 18 of a collapsing portion that buckles. There is no basis for the feature defined in claim 19 of a collapsing portion that twists. There is no basis for the feature defined in claim 20 of a collapsing portion that folds out. There is no basis for the feature defined in claim 21 of a collapsing portion that selfdeforms. There is no basis for the feature defined in claim 22 of a collapsing portion that plastically deforms.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter for the reasons set forth above. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4-6 and 17-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter

which applicant regards as the invention. It is unclear what structure of the specification and drawings is intended to form a basis for the claimed subject matter. Therefore the scope of the claims is unclear.

Claims 4-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Loshakove et al. (2004/0097973). Note claims 53, 55 and 56 of Loshakove et al. Note that the effective filing date for claims 4-6 of this application is Feb. 28, 2002 because none of the parent applications provides a basis for the claimed subject matter under the of 35 U.S.C. 112, first paragraph.

Claims 17-22 are rejected under 35 U.S.C. 102(a) as being anticipated by Loshakove et al. (WO 01/41623 A2). Note claims 75-80 of Loshakove et al. Note that the effective filing date for claims 17-22 of this application is Feb. 28, 2002 because none of the parent applications provides a basis for the claimed subject matter under the of 35 U.S.C. 112, first paragraph.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (703)308-2154. The fax phone number for the

Art Unit: 3731

organization where this application or proceeding is assigned is  
(703)872-9306.

Any inquiry of a general nature or relating to the status  
of this application or proceeding should be directed to the  
receptionist whose telephone number is (703)308-0858.

mht  
9/24/04



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731